No. 4409

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

OLD COLONY TRUST COMPANY, a corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association, NATIONAL CITY BANK, a National Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Appellants,

vs.

UNION LAND & CATTLE COMPANY, a corporation, and W. T. SMITH, Receiver of said Union Land & Cattle Company, Under and By Virtue of that Certain Order Given and made by the Above-entitled Court in the above-entitled Action on July 28, 1920, and to J. W. DORSEY and W. E. CASHMAN,

Appellees.

BRIEF FOR APPELLANTS.

MCCUTCHEN, OLNEY, MANNON & GREENE,
THATCHER & WOODBURN,
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Appellees.

BRIEF FOR APPELLANTS.

I. STATEMENT OF THE CASE.

This is an appeal from an order of the District Court for the District of Nevada, dated August 4, 1924, awarding $2500 as attorneys' fees to Messrs. J. W.

Dorsey and W. E. Cashman for legal services alleged to have been rendered by them to W. T. Smith, the Receiver of the Union Land and Cattle Company, in an action then pending in said United States District Court entitled "First National Bank of San Francisco, a corporation, Complainant, against Union Land and Cattle Company, a corporation, Defendant", and numbered therein "In Equity—B-11".

The appellants are Old Colony Trust Company, First National Bank of Boston, National Bank of Commerce in New York, The First National Bank in St. Louis, National Shawmut Bank of Boston, National City Bank, and First National Bank of Chicago. These seven banks are unsecured creditors of the defendant Union Land and Cattle Company in principal amounts aggregating $1,800,000, and they had previously been permitted to intervene in the action.

Said action No. B-11 was commenced on July 28, 1920, on which date W. T. Smith was appointed Receiver. On the same date, Messrs. George S. Brown and Samuel W. Belford were appointed attorneys for the Receiver. Ever since Mr. Smith's appointment, he has continued to act as Receiver of the assets of the Union Land and Cattle Company and Messrs. Brown & Belford have continued to act as his attorneys. Up to the present time Mr. Smith has received out of the receivership estate as compensation for his services the sum of $60,000 and Messrs. Brown & Belford have received as compensation for their services as his attorneys the sum of $15,500.

The services for which Messrs. Dorsey & Cashman were awarded the sum of $2500 are alleged to have been rendered in connection with three appeals, which were prosecuted (two of them by these appellants and one by the trustees under a bond mortgage executed by the Union Land and Cattle Company under date of September 1, 1916) from orders made in the receivership proceedings during the fall of 1923, in which the defendant Union Land and Cattle Company, and the Receiver were the appellees. These appeals were argued and submitted together before this court on March 28, 1924, and were decided by this court on April 7, 1924, in an opinion written by Circuit Judge Rudkin and concurred in by Judges Hunt and Morrow, reported in 297 Fed. at p. 353.

The three appeals are numbered in the records of this court, Nos. 4194, 4195 and 4196.

Appeal No. 4194 was by the First Federal Trust Company and Milton R. Clark as Trustees under deed of trust executed by the Union Land and Cattle Company on September 1, 1916, from an order of the District Court dated November 2, 1923, denying its petition for leave to intervene in the receivership proceeding and to exercise the power of sale vested in them under the terms of the said deed of trust. Upon this appeal this court affirmed the judgment of the District Court.

Appeal No. 4195 was an appeal by the present appellants and by the complainant in the receivership action, First National Bank of San Francisco, from an

order of the District Court denying the petition of the appellants for an order permitting the present appellants to intervene in the receivership action and denying the petition of the present appellants and of the complainant for an order directing the liquidation and sale of the assets of the Union Land and Cattle Company. Upon this appeal this court modified the order of the District Court; directed the District Court to permit the seven banks to intervene in the receivership action; and, finally, directed the District Court to proceed to liquidate in the manner specified in this court's opinion. Costs were also awarded to the appellants.

Appeal No. 4196 was an appeal by the present appellants and by the complainant and was from an order of the District Court granting the petition of the Receiver for leave to invest $110,000 in livestock and if necessary to borrow money for that purpose and to issue Receiver's certificates therefor. Upon this appeal this court reversed the order of the District Court; directed the Receiver not to make further capital investments; and awarded appellants their costs.

In connection with these appeals this court further disapproved, and found to be without justification in the evidence before the District Court, certain findings contained in the opinion of the District Judge imputing fraud and conspiracy to Mr. Rudolph Spreckels and Messrs. Cushing & Cushing.

It thus appears that the services alleged to have been performed by Messrs. Dorsey and Cashman for the

Receiver and for which compensation was awarded, were in resisting two appeals successfully prosecuted by these appellants, and in seeking to uphold unwarranted aspersions on the character of the two officials of the First Federal Trust Company, which this court branded as without support in the records before the District Court.

As a result of the decision of this court in Appeals Nos. 4194, 4195 and 4196, rendered on April 7, 1924, as aforesaid, Mr. W. T. Smith, the Receiver of the Union Land and Cattle Company, filed in the District Court an application for instructions as to how he should proceed in the liquidation of the assets of the Union Land and Cattle Company in conformity with the aforesaid opinion of this court. This last mentioned petition was filed on May 23, 1924.

On May 26, 1924, the Receiver also filed a petition for an order ratifying and authorizing the payment by him of approximately $10,000 in connection with the purchase of certain land from one R. M. Lesher, said last-mentioned order being the subject of Appeal No. 4410, which is submitted herewith.

On June 18, 1924, Messrs. Dorsey and Cashman filed in the receivership proceedings a petition for an order authorizing the Receiver of the Union Land and Cattle Company

> "to repay to the undersigned the moneys by them advanced, laid out and expended for transportation, hotel charges and other expenses by them incurred in trips to and from said Carson City, and while there, and in and about and for the benefit of said

Company, its creditors and all interested in the matter of said receivership, from May, 1923, to May, 1924, inclusive. And also for reasonable compensation for professional services as attorneys for said Cattle Company, and as special counsel for said Receiver and in the interest of said Cattle Company and of its creditors and others concerned in the properties in the hands of said Receiver; and all in protecting the properties and estate of said Cattle Company in the hands of said Receiver from spoliation, waste, sacrifice and destruction.

The moneys expended by the undersigned for the purposes aforesaid aggregate the sum of Six Hundred Twenty and 57/100 Dollars ($620.57).

The fee which will be asked through the motion above mentioned for the professional services rendered by the undersigned during the period above limited, will be the amount to be fixed by the Court as a reasonable compensation for the professional services referred to in and about the petitions, orders and appeals therefrom, heard and made in the above-entitled court, and for services performed in the several appeals taken from orders entered by the above-entitled court in said above enumerated matters."

(Tr. pp. 4-5.)

The three petitions, namely, the petition of the Receiver for instructions; the petition of the Receiver respecting the Lesher transaction; and the petition of Messrs. Dorsey and Cashman for compensation, came on for hearing in the District Court on June 18, 1924, and were heard together, the hearings extending over a period of three days. The matter was then submitted, and on August 4, 1924, all three were decided by the District Court.

In the opinion filed by the District Judge on August 4, 1924, Judge Farrington said respecting the application of Messrs. Dorsey and Cashman for compensation:

> "Petitions for orders directing the receiver to surrender the mortgaged property to the trustees, and to sell the remaining property forthwith, were denied, and appeals were speedily taken. The issues were of such vital importance that it was deemed expedient and necessary to employ additional counsel to assist Messrs. Brown & Belford in the presentation of the receiver's cases in the Circuit Court of Appeals. Accordingly, the receiver was directed to retain Messrs. Dorsey and Cashman. They were familiar with all the evidence and the issues involved; they were also heartily in accord, not only with the theory that the Trust Company had waived the alleged default, notwithstanding the provisions against waiver in the trust deed, but that the receivership could not be a default within the meaning of the trust deed, if, when the receiver was appointed, the Court was not informed that under the trust deed such an order of appointment would constitute a default entitling the trustees to immediate possession of all the mortgaged property, with the right to sell it on such terms as they might fix.
>
> The services performed by them were not only exceedingly valuable, but they are deserving of much larger compensation than the $2,500 which I here allow. To argue that their assistance was unnecessary and the employment unwise, might perhaps be regarded as depreciating the ability and legal skill of the array of eminent and confident counsel opposed to the four attorneys representing the receiver.
>
> Trustees etc. v. Greenough, 105 U. S. 527;
> Burden Central Sugar-Refining Co. v. Ferris Sugar Mfg. Co., 87 Fed. 810.

> Said fee of $2,500, and the costs necessarily incurred by Messrs. Dorsey and Cashman in printing briefs, etc., will be paid by the receiver."
>
> (Tr. pp. 14-15.)

In the order made on August 4, 1924, Judge Farrington disposed of the application for compensation by Messrs. Dorsey and Cashman as follows:

> "He (the Receiver) is also directed to pay to J. W. Dorsey and W. E. Cashman $2500, for services heretofore rendered the receiver in the Circuit Court of Appeals."
>
> (Tr. p. 28.)

Acting upon the basis of the foregoing order the Receiver has since paid to Messrs. Dorsey and Cashman the sum of $2,500 out of the funds of the Union Land and Cattle Company in his hands.

The issues presented by this appeal are clean-cut and admit of no elaboration.

Messrs. Dorsey and Cashman, as shown by the record before the court, were the attorneys of record in action No. B-11, the receivership action in the District Court, *for the Union Land and Cattle Company, the defendant in that action.* They also represented a group of local Nevada creditors of the Union Land and Cattle Company, having claims amounting to approximately $500,000, and who were from the start aligned with the defendant, the Union Land and Cattle Company, and its stockholders, against the complainant in the action and the seven intervening banks now appearing as appellants on this appeal, in an exceedingly bitter contro-

versy which had existed between these two sets of conflicting interests. In every proceeding which took place from June, 1923 up to the time of the appeals, Messrs. Dorsey and Cashman appeared advocating the policy desired by the defendant, the Union Land and Cattle Company, its stockholders and the so-called Nevada creditors, and opposed the policy advocated by the complainant and the seven intervening banks.

That Messrs. Dorsey and Cashman were in fact the attorneys of record for the Union Land and Cattle Company and the Nevada creditors is not denied, inasmuch as they appeared of record in all the proceedings. Mr. W. T. Smith, the Receiver, moreover, testified that he employed them to act as attorneys for the defendant corporaion about May of 1923. Mr. Smith is a large stockholder of the Union Land and Cattle Company and stated that he felt that the corporation needed representation and for that reason he employed Messrs. Dorsey and Cashman and told them that if necessary he would pay their compensation out of his own funds (Tr. p. 82).

That a bitter conflict of interest existed between the Union Land and Cattle Company and the Nevada creditors, represented by Messrs. Dorsey and Cashman, on the one hand, and the complainant and the seven intervening banks on the other hand, is well known to this court. The defendant, Union Land and Cattle Company, and the Nevada creditors desired that the Receiver should continue to operate the properties in the hope of an improvement in the livestock market. The com-

plainant and the seven intervening banks desired that the receivership should terminate forthwith, that the properties be sold, and the assets of the company distributed so far as they would go in the liquidation of the unpaid indebtedness of the company. That the conflict of interest was deep-rooted became additionally manifest to this court from observing the aspersions cast upon the representatives of the complainant and the seven eastern banks in the opinion of the District Court, which were found to be without foundation by this court.

With these two elements established, namely, the fact that Messrs. Dorsey and Cashman were the attorneys of record for one set of parties to the liquidation; and, secondly, that as between such parties on the one hand and the complainant and the intervening banks on the other hand there existed a conflict of interest, the case is brought squarely within the rule that an attorney for one of the parties to an action in which a Receiver is appointed may not be appointed to represent the Receiver and may not be paid compensation out of the receivership estate for such services if rendered.

In violation of this rule the District Judge made three orders:

On March 17, 1924, in action No. B-11, Judge Farrington entered the following order:

> "The receiver herein is authorized to employ such additional legal assistance as he may think necessary, connected with the three appeal cases, to wit, No. 4194, No. 4195 and No. 4196, pending in the United States Circuit Court of Appeals for the

Ninth Circuit, in which he as receiver is now interested as the appellee."

(Creditor's Exhibit A; Tr. p. 61.)

On March 26, 1924 (only two days before the argument of appeals Nos. 4194, 4195 and 4196 before this court on March 28, 1924) Judge Farrington entered the following order:

"J. W. Dorsey and W. E. Cashman are hereby appointed additional counsel for the receiver in the following cases now pending in the Circuit Court of Appeals of the United States for the Ninth Circuit, with full authority to represent the receiver therein, to wit:

First Federal Trust Company (a Corporation), and Milton R. Clark, as trustee under and by virtue of that certain deed of trust or indenture dated, September 1, 1916, executed by Union Land and Cattle Company (a corporation), to First Federal Trust Company (a corporation), and Milton R. Clark, trustees, Appellants, v. The First National Bank of San Francisco (a corporation), and Union Land and Cattle Company (a corporation), and W. T. Smith, receiver of said Union Land and Cattle Company (a corporation), under and by virtue of that certain order given and made on July 28, 1920, Appellees, No. 4194.

The First National Bank of San Francisco, a corporation, Appellant, v. Union Land and Cattle Company, a corporation, and W. T. Smith, Receiver of said Union Land and Cattle Company, under and by virtue of that certain order given and made on July 28, 1920, Appellees, and Old Colony Trust Company, a corporation, The First National Bank of Boston, a National Banking Association, National Bank of Commerce in New York, a national banking association, The First National Bank in St. Louis, a national banking association, National Shawmut Bank of Boston, a

national banking association, and First National Bank of Chicago, a national banking association, Appellants, v. Union Land and Cattle Company, a corporation, and W. T. Smith, Receiver of said Union Land and Cattle Company, under and by virtue of that certain order given and made on July 28, 1920, Appellees, No. 4195.

The First National Bank of San Francisco, a corporation, Old Colony Trust Company, a corporation, the First National Bank of Boston, a national banking association, National Bank of Commerce in New York, a national banking association, The First National Bank in St. Louis, a national banking association, National Shawmut Bank of Boston, a national banking association, National City Bank, a national banking association, and First National Bank of Chicago, a national banking association Appellants, v. W. T. Smith, Receiver of the Union Land and Cattle Company, a corporation, under and by virtue of that certain order given and made on July 28, 1920, Appellee. No. 4196."

(Creditor's Exhibit B—Tr. pp. 62-64.)

Even Messrs. Brown & Belford, the regular counsel for the Receiver, did not know of the making of this order, or that it was in contemplation, until after it had been made and until Mr. Belford had in large measure completed the preparation of briefs in behalf of the Receiver (Tr. p. 69).

Messrs. Brown & Belford filed briefs in behalf of the Receiver and argued the cases orally in behalf of the Receiver. Pursuant to the order, Messrs. Dorsey and Cashman filed briefs in behalf *of the Union Land and Cattle Company and of the Receiver* and appeared before this court and argued the matters orally in behalf

of the Union Land and Cattle Company and of the Receiver.

On August 4, 1924, as above stated, the District Court made the order complained of, awarding Messrs. Dorsey & Cashman the sum of $2500, as compensation for their services in connection with the appeals.

We submit that the order should be reversed for two reasons:

First, because it was error and abuse of discretion upon the part of the District Court to employ the attorneys of record for the defendant and certain creditors to represent the Receiver in a controversy between said defendant and said creditors on the one hand and the complainant and the seven intervening banks on the other hand;

Secondly, because during the course of the trial Messrs. Dorsey and Cashman in open court disclaimed any right to compensation for any services which they might be deemed to have rendered to the Receiver, and based their contention upon a wholly untenable claim that they were entitled to compensation on the theory that their services had redounded to the benefit of all of the creditors of the Union Land and Cattle Company.

II. ASSIGNMENTS OF ERROR.

(1) Appellants assign as error and as abuse of discretion by the District Court the awarding of $2500, or any sum, to Messrs. Dorsey and Cashman for legal ser-

vices rendered by them to the Receiver for the reason that said Dorsey and Cashman were attorneys of record in action No. B-11 for the defendant Union Land and Cattle Company and the so-called Nevada creditors, because a receivership court may not appoint the attorney for one of the parties to the action to represent its Receiver in a controversy in which a conflict of interest exists between said parties and other parties to the litigation (Assignments of Error Nos. 1, 2, 3, 4, 5 and 6, tr. pp. 109-111).

(2) Appellants assign as error the allowance to said Dorsey and Cashman of said sum of $2500, or any sum whatever, for services rendered to the Receiver in the Circuit Court of Appeals because said Dorsey and Cashman in open court disclaimed any right to compensation for services rendered by them to said Receiver in said Circuit Court of Appeals (Assignments of Error No. 7, tr. p. 112).

III. BRIEF OF THE ARGUMENT.

(1) IT IS ERROR FOR A COURT IN A RECEIVERSHIP ACTION TO APPOINT AS ATTORNEYS FOR ITS RECEIVER THE ATTORNEYS FOR ONE OF THE PARTIES TO THE ACTION, AND PARTICULARLY SO WHEN A CONFLICT OF INTEREST EXISTS BETWEEN THE PARTIES REPRESENTED BY THE SAID ATTORNEYS AND OTHER PARTIES TO THE LITIGATION.

There is no dissent as to this rule in the authorities.

Tardy's Smith on Receivers, Vol. 2 (Second Ed.), Sec. 631, p. 1760;

High on Receivers, (4th Ed.), Sec. 216, p. 258;
Alderson on Receivers, Sec. 233, p. 292;
Beach on Receivers, Sec. 262, p. 209;
Gluck and Becker on "Receivers of Corporations", Sec. 52, 34 Cyc. 291;
Edwards on "Receivers in Chancery", p. 93;
McPherson v. United States, 245 Fed. 35;
Adler v. Seaman, 266 Fed. 828, *843*;
Blair v. St. L., H. & K. R. Co., 20 Fed. 348;
Vieth v. Ress, 82 N. W. 116 (Sup. Ct. of Neb. 1900);
Ryckman v. Parkins, 5 Paige Ch. 543 (3 N. Y. Chancery Reps. 822);
Adams v. Woods, 8 Cal. 306.

Under this rule it follows as a necessary corollary that an order directing the Receiver to make a payment to attorneys for services alleged to have been rendered by such attorneys to the Receiver following an appointment not valid because of the fact that such attorneys were representative of one of the parties to the action, will be reversed.

High on Receivers, (4th Ed.), par. 188, at p. 217:

> "Indeed, it has been held reversible error to make an allowance of counsel fees to a receiver's attorney who also represented the plaintiff in the action."

In

Vieth v. Ress, supra,

the Supreme Court of Nebraska in 1900 reversed such an order, saying:

"One of the attorneys for the plaintiff was appointed as attorney for the receiver, and awarded $100 for his services. This allowance was resisted, and is complained of here. We think the court erred in appointing Mr. Pettis to act for the receiver, over the protest of creditors. The interests of the debtor and creditor are conflicting, and the same attorney cannot with propriety act for the receiver, who represents both. The statute provides that 'no person shall be appointed receiver who is party, solicitor, counsel, or in any manner interested in the suit.' Section 271, Code Civ. Proc. The policy that requires the appointment of an impartial receiver would seem to dictate that his legal adviser be impartial, too. We think the law upon this subject is correctly stated by Beach in his work on the Law of Receivers (Alderson's Ed., 1897). At page 274 the learned author says: 'The same reasons which suffice to render the legal adviser of one of the parties to an action ineligible to be appointed receiver operate, also, to prevent him from being allowed to act as counsel for the receiver. Besides his interest in the final result of the controversy, his duty to protect and enforce the rights of one of the parties, being his client, will, in most cases if he should also act as counsel for the receiver, be likely to impose upon him conflicting and inconsistent duties such as cannot be properly performed by one person.'" * * *

"For the error committed by the court in allowing Mr. Pettis $100 for services rendered by him as attorney for the receiver, the decree will be reversed and the cause remanded, with direction to the district court to render a judgment conforming to the views expressed in this opinion. Reversed and remanded."

In

Adams v. Woods, supra,

the rule was applied by the Supreme Court of California

to facts quite similar to those involved in the instant case. In an action brought by Adams v. Woods & Haskell for a dissolution of partnership, the trial court in allowing compensation for legal services to one Stanley, who had been appointed by it attorney for its receiver, denied a claim made by Stanley for compensation for Messrs. Shafter & Park, who, he asserted, had acted as associate counsel with him. Stanley appealed and the judgment of the District Court was affirmed, upon the ground that Shafter & Park could not be allowed compensation for services rendered to the Receiver for the reason that they were the attorneys of record for one of the individual parties to the litigation.

In applying this rule, Mr. Justice Burnett, speaking for the Supreme Court of California, said:

> "The salutary character of the rule which will not permit a receiver to employ as *his* counsel those engaged for any other party to the proceedings, and the necessity for sustaining and enforcing it, are forcibly illustrated, and confirmed by the facts and circumstances of this case. The counsel seem to have been fully aware of the rule, otherwise we cannot account for the circumstance that Shafter & Park were not associate counsel on the record, but were such in point of fact."
>
> * * * * * * * *
>
> "The principle settled in these authorities is entirely applicable to the facts of this case. Shafter & Park being the counsel of Adams, had no right to subject themselves to the counsel of the receiver; and any services they may have performed, must be held to have been performed for their own client, and they must look to him alone for compen-

sation. It would be as safe to permit a receiver to act as his own counsel, and to allow him compensation therefor, as to permit the attorney of the plaintiff to act for the receiver, and then claim pay out of the fund in his hands. The practice, if tolerated, would lead inevitably to the most melancholy abuses. Attorneys are officers of the court, and it is its highest duty to see that its own officers conduct themselves properly; and that this end may be obtained, the court should inflexibly discountenance every practice that may tend to bring reproach upon the administration of justice."

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(2) MESSRS. DORSEY AND CASHMAN UPON THE HEARING WITHDREW ALL CLAIM FOR SERVICES RENDERED BY THEM TO THE RECEIVER UNDER THE ORDERS OF THE COURT, AND RESTED THEIR CLAIM FOR COMPENSATION UPON THE WHOLLY UNTENABLE GROUND THAT THEIR SERVICES REDOUNDED TO THE ADVANTAGE OF ALL OF THE CREDITORS.

Upon the hearing Mr. Dorsey disclaimed any right to compensation under the orders of March 17, 1924, and March 26, 1924, for services rendered to the Receiver in connection with the appeals in the Circuit Court of Appeals.

We quote in this connection from Mr. Dorsey's testimony:

"The WITNESS. In all the proceedings to which Mr. Cashman has referred, including those referred to in connection with my employment by the receiver, I was acting exclusively for the Union Land and Cattle Company, from the beginning of the proceedings initiated by the filing of the petition to sue the receiver until, and only until we went, just

before we went into the hearing of the case on appeal. I represented, I think, all the creditors in all things that I have done since I was first employed by the Union Land and Cattle Company, not only the particular creditors mentioned by us, and our own creditors, but your clients. I thought I knew I represented the First National Bank of Chicago, and I think I know I did. I think the attempt here was to destroy this institution, to sell this institution and I thought, and still think that those proceedings would have resulted, if successful on your part, in destroying the value of the property, impoverish my clients, and hurt, I mean lessen the moneys that your clients would receive. I thought the course that I was taking was for the advantage of the creditors, and all of the creditors of the Union Land and Cattle Company. I was representing the company which owed these obligations to the creditors, and I acted in behalf of all the creditors, if that is what you mean. I was really employed by and acted for the company, and in the interest of the creditors, and that is the only interest I have. Let me make a preliminary statement. Perhaps I was a bit hasty this morning in saying in the weakness of the moment that at this hearing I was representing the receiver. I want to say what I have done in behalf of the receiver, or in that interest, was done because it was to the advantage of the Union Land and Cattle Company to have it done; I was called to render that assistance, and I want nothing for it, and my bill does not include that, I want no pay for that. I want no pay for anything done in the interest of the receiver as such; so that this claim does not include any services rendered to the receiver, either in this court or the appellate court, or in this proceeding. Therefore, my claim is made for work done wholly in the interest of the Union Land and Cattle Company, incidentally and of course primarily in the interest of its creditors."

(Tr. pp. 38-39.)

We quote again from Mr. Dorsey's testimony appearing at page 41 of the record:

> "Mr. GREENE. Colonel Dorsey, in your petition you ask for compensation on account of services rendered to the receiver, unless I am very much mistaken.
>
> Mr. DORSEY. Well, maybe that is so, I don't remember. If it is so, I withdraw it. Professional services rendered, and as special counsel for the receiver; I move that be stricken out; I withdraw that statement. I think I put that in myself."

Upon the basis of these statements by Mr. Dorsey, the claim of Messrs. Dorsey and Cashman for compensation was reduced to the proposition that the object of the complainant and the seven intervening eastern banks (the appellants herein) was throughout all of the litigation leading up to Appeals Nos. 4194, 4195 and 4196, seeking to destroy the value of the assets of the Union Land and Cattle Company; that Messrs. Dorsey and Cashman were in effect entitled to compensation from the complainant and the seven eastern banks for opposing them and for endeavoring to prevent them from accomplishing the object which they were seeking to obtain themselves.

The answers to this proposition are too apparent to require elaboration.

In the first place the complainant and the intervening banks (the appellants) were successful in two of the three appeals.

In the second place this court, in its opinion in connection with Appeals Nos. 4194, 4195 and 4196, found that there was no basis whatever for the charges of

wrongdoing made in Judge Farrington's opinion of January 17, 1924.

In the third place, it is obvious that whatever services were performed by Messrs. Dorsey and Cashman at the instance of the Union Land and Cattle Company and its stockholders, and at the instance of the Nevada creditors, were rendered in furtherance of the policy which those parties to the litigation favored, namely, that of continued operation, and in opposition to the policy which the complainant and the seven intervening banks desired, namely, that of liquidation, etc.

Finally, the order made by Judge Farrington on August 4, 1924, does not purport to award Messrs. Dorsey and Cashman compensation for services rendered to the Union Land and Cattle Company and its stockholders and to the Nevada creditors, and incidentally resulting favorably to the other creditors, but was specifically for services found by Judge Farrington to have been rendered to the Receiver pursuant to Judge Farrington's orders of March 17, 1924, and March 26, 1924.

It is respectfully submitted that the order appealed from should be reversed.

Dated, January 26, 1925.

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